

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
CINCINNATI, OHIO

ROBERT W. FERRELL	:	CASE NO. 1:02-cv-00190
	:	(Black, J.)
Plaintiff,	:	
v.	:	DEFENDANT'S MEMORANDUM IN
	:	<u>OPPOSITION TO MOTION</u>
LAKOTA SCHOOL DISTRICT aka	:	
LAKOTA LOCAL SCHOOL DISTRICT	:	
	:	
Defendant.	:	

Now comes defendant Lakota School District aka Lakota Local School District and for its memorandum in opposition to Plaintiff's Motion in Limine as to Defendant's Exhibit A, sets forth the following.

Defendant's Exhibit A is the Union Contract in effect for the bargaining unit of school bus drivers at Lakota School District as of August 2001. The contract is relevant in several particulars including (1) salary and benefits due to contract drivers, (2) the absence of any reference to the use of "substitute seniority" in the initial assignment of school bus routes to new contract drivers, (3) the references to the rebidding process known as "shakeout" which causes route assignments to be changed approximately six weeks into each school year, (4) the availability of extensions, (5) the availability of shuttles, and (6) the availability of field trips.

It is plaintiff's argument that the assignment of a route to him constituted an adverse employment action. It is defendant's contention that the assignment was not adverse in that all drivers were paid equally and that driver pay is not based solely on the assigned routes but on a combination of driving performed including routes, extensions, shuttles and field trips. Further,

given that there is a rebidding for routes six weeks into the school year it is entirely likely that had Mr. Ferrell accepted the route he was offered he would have been able to change to a route he preferred only six weeks into the school year.

Because all of plaintiff's damage claims arise under the agreement with the bargaining unit other provisions relating to, rights and duties, grievance and procedures are also relevant to a determination of this case.

Respectfully submitted,

s/ Thomas M. Green
THOMAS M. GREEN (0016361)
GREEN & GREEN, Lawyers
800 Performance Place
109 North Main Street
Dayton, Ohio 45402-1290
Tel.: 937/ 224-3333
Fax : 937/ 224-4311
tmgreen@green-law.com
Trial attorney for defendant Lakota School
District aka Lakota Local School District

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: None and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: Richard L. Hurchanik, Esq., 110 North Third Street, Hamilton, Ohio 45011.

s/ Thomas M. Green
THOMAS M. GREEN (0016361)